



## Texas Commission on Environmental Quality

PO Box 13087, MC-160, Austin, Texas 78711-3087

Telephone (512) 239-4691, FAX (512) 239-4770

### APPLICATION FOR AMENDMENT TO A WATER RIGHT

**Notice:** This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

**Customer Reference Number (if issued):** CN603256413

**Note:** If you do not have a Customer Reference Number, complete Section II of the Core Data Form (TCEQ-10400) and submit it with this application.

1. Name: Luminant Generation Company LLC  
Address: 1601 Bryan Street, EP 27  
Dallas, Texas 75201-3401  
Phone Number: (214) 875-8299 Fax Number: (214) 875-8699  
Email Address: spicer@luminant.com
2. Applicant owes fees or penalties?  
☐ Yes ☒ No  
If yes, provide the amount and the nature of the fee or penalty as well as any identifying number:  
\_\_\_\_\_
3. ☐ Permit No. \_\_\_\_\_ ☒ Certificate of Adjudication No. 12-4345  
Stream: Manos Creek Watershed: Brazos River Basin  
Reservoir (present condition, if one exists): Lake Creek Reservoir (fair condition)  
County: McLennan
4. Proposed Changes To Water Right Authorizations:  
Add domestic, municipal, agricultural, and recreational uses; delete "(cooling and condensing)" from currently-  
authorized industrial use. See Supplemental Information, attached.
5. (Attach additional  
page as necessary, attach map/plat depicting project location, diversion point, place of use, and other pertinent data).  
I understand the Agency may require additional information in regard to the requested amendment before  
considering this application.

[Signature]  
Name (sign)

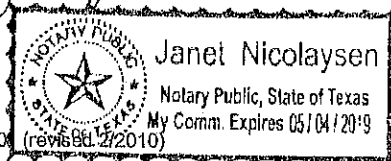
\_\_\_\_\_  
Name (sign)

STEPHEN G. HOAN  
Name (print)

\_\_\_\_\_  
Name (print)

Subscribed and sworn to me as being true and correct before me this 13<sup>th</sup> day of

July, 2016.



[Signature]  
Notary Public, State of Texas

**SUPPLEMENTAL INFORMATION**  
**APPLICATION TO AMEND CERTIFICATE OF ADJUDICATION 12-4345**  
**PURSUANT TO TEX. WATER CODE § 11.122**  
**APPLICANT: LUMINANT GENERATION COMPANY LLC**

I. Introduction & Background

Luminant Generation Company LLC ("Luminant") owns Certificate of Adjudication 12-4345 (the "Certificate"), which authorizes it to: (1) impound 8,500 acre-feet of water in a reservoir on Manos Creek near the City of Riesel in McLennan County (the "Lake Creek Reservoir"); (2) divert 8,996 acre-feet of water per year from the Brazos River into the Lake Creek Reservoir; and (3) divert and use 10,000 acre-feet of water per year from the Lake Creek Reservoir for industrial (cooling and condensing) purposes. The Certificate is attached hereto as Attachment B.

The Certificate is the source of water for cooling and condensing needs at Luminant's Lake Creek Steam Electric Station. At this time, the Lake Creek Steam Electric Station is an ERCOT retired facility; however, it may become operational again. In the meantime, Luminant wishes to have the ability to sell or lease water appropriated under the Certificate to others so that the water is beneficially used to satisfy water needs in the region.

Through this application ("Application"), Luminant respectfully requests that the Texas Commission on Environmental Quality (the "Commission") amend the Certificate to authorize additional beneficial purposes of use for the water appropriated under the Certificate. Additionally, Luminant requests the deletion of the modifying phrase "cooling and condensing" to ensure that water may be used under the Certificate for *all* industrial uses, including, but not limited to, condensing and cooling. Luminant requests this amendment to increase the flexibility of the water right, maximizing Luminant's ability to efficiently put to beneficial use the water appropriated to it. No other amendment to the Certificate is requested.

II. Applicable Law

This Application is submitted pursuant to Texas Water Code Section 11.122(b), which requires the Commission to approve a water right amendment application if it:

- does not request an increase in the amount of water to be diverted or rate of diversion;
- will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment (the "full-use assumption"); and
- meets other applicable requirements of the Texas Water Code.

The Application does not request an increase in the amount of water to be diverted or rate of diversion. It requests only the expansion of the beneficial uses authorized by the Certificate. Therefore, it meets the first criterion.

Tex. Water Code Section 11.122(b), known as the “full-use” assumption, provides:

Subject to meeting all other applicable requirements of this chapter for the approval of an application, an amendment, except an amendment to a water right that increases the amount of water authorized to be diverted or the authorized rate of diversion, shall be authorized if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment.

The Application, if granted, would only add authorized purposes of use to the existing Certificate; all other terms and conditions of the existing Certificate would remain the same. The Application does not request an increase in the amount of water authorized to be diverted or the authorized rate of diversion. Moreover, it does not request any change to the authorized diversion point. The Certificate contains no restrictions or limitations on the pattern of use that could be impacted by the Application. For these reasons, there can be no adverse impact on other water right holders or the environment on the stream of greater magnitude than if the Certificate were fully exercised according to its terms prior to the requested amendment.

Under the Texas Supreme Court’s ruling in *City of Marshall*, for a water right that does not seek to increase the amount or rate of diversion, the Commission must assess whether the proposed amendment has the potential to cause adverse impacts to other water rights holders or the environment “beyond or irrespective of” the full-use assumption.<sup>1</sup> As demonstrated by the responses provided under Section V, below, the application has no potential to cause adverse impacts to other water rights holders or the environment “beyond or irrespective of” the full-use assumption.

Finally, as demonstrated by the Application and Supplemental Information, the Application meets all other applicable requirements of the Texas Water Code.

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<sup>1</sup> *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 111 (Tex. 2006).

III. Applicant Information

Name of Applicant: Luminant Generation Company LLC  
Address: 1601 Bryan Street, EP 27  
Dallas, Texas 75201-3401  
Principal Contact: Gary Spicer  
Telephone: (214) 875-8299  
Fax: (214) 875-8699

IV. Public Notice

An application to amend a water right that does not contemplate an additional consumptive use of state water or an increased rate of period of diversion and that has no potential to harm another water right is subject to amendment without notice to the public.<sup>2</sup> Additionally, the Texas Supreme Court has held that the Commission must assess several public interest criteria to determine whether to issue public notice for an amendment application that does not seek to increase the amount or rate of diversion.<sup>3</sup>

The Commission has previously considered in open meetings several water right amendment applications requesting only the addition of authorized purposes of use and determined that no public notice is required.<sup>4</sup>

Because the Application does not request an increase in the amount or rate of diversion and based upon the additional information provided below in satisfaction of the public interest criteria, Luminant respectfully requests that the Executive Director determine that no public notice of the Application is required and issue the amended Certificate.

V. Responses to Public Interest Criteria Questions

1. *Confirm whether this application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) §§ 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.*

The sworn Application provides all required information necessary to comply with the administrative requirements for amendment of a water rights permit, including Title 30, Texas Administrative Code Chapter 295 (related to water rights procedural rules) and the requirements

<sup>2</sup> TEX. WATER CODE § 11.122(b); 30 TEX. ADMIN. CODE § 295.158(c)(1).

<sup>3</sup> See *City of Marshall*, 206 S.W.3d at 110.

<sup>4</sup> See, e.g., TCEQ Docket Nos. 2009-0912-and 2009-0914-WR (considered at Sept. 23, 2009 Commission Meeting); TCEQ Docket Nos. 2008-1899-WR, 2008-1900-WR, 2008-1901-WR, 2008-1902-WR, and 2008-1913-WR (considered at Apr. 22, 2009 Commission Meeting); and TCEQ Docket Nos. 2008-0650-WR, 2008-0651-WR, and 2008-0652-WR (considered at August 20, 2008 Commission Meeting).

of Chapter 11 of the Texas Water Code. Pursuant to Title 30, Texas Administrative Code Section 295.132 and other TCEQ rules related to fees, a check for \$101.25 is enclosed. Luminant respectfully requests a determination of any additional fees that are due. Luminant will remit payment of additional fees upon receipt of the TCEQ's determination.

2. *Discuss how the proposed amendment is a beneficial use of the water right as defined in TWC §11.002 and listed in TWC §11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.*

The proposed amendment requests the addition of domestic, municipal, agricultural, and recreational uses, and the deletion of the phrase "cooling and condensing," which modifies the currently authorized industrial use. Each of the uses proposed for the amended Certificate is specifically enumerated in Texas Water Code Section 11.023 as a beneficial use for which state water may be appropriated, stored, or diverted.

3. *Explain how the proposed amendment is not detrimental to the public welfare. Consider any public welfare matters you think might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.*

The proposed amendment would add flexibility to the beneficial purposes to which the appropriated water can be applied. The increased flexibility will allow Luminant to use the water it has been appropriated in the most efficient manner possible and to sell or lease water that it is not currently using under the Certificate. Maximizing efficiency of surface water use in the Brazos River Basin is in the public interest and is not detrimental to the public welfare.

4. *Discuss the effects, if any, of the proposed amendment on groundwater or groundwater recharge.*

Under Texas Water Code Section 11.151, the Commission must consider the potential effects of the Application, if any, on groundwater or groundwater recharge. The Application requests only the addition of authorized uses to an existing Certificate of Adjudication, with no other changes. It will have no impact on groundwater resources, either by withdrawal or recharge.

5. *Describe how the proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement.*

As required by Texas Water Code Section 11.134(b)(3)(E), the proposed amendment addresses a water supply need in a manner that is consistent with the State Water Plan and the relevant approved regional water plan. The Region G Regional Water Plan and the State Water Plan include water supply demands in the Brazos River Basin for domestic and municipal, agricultural, recreational, and industrial purposes. The proposed amendment seeks to add

flexibility to the Certificate so that it can be used to meet those needs. The proposed amendment is not inconsistent with, and does not conflict with, any project in the Region G Regional Water Plan or the State Water Plan.

6. *Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC §11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC §288.*

Luminant's purpose in requesting this amendment is to enable Luminant to sell or lease water appropriated under the Certificate that Luminant is not currently using for its own purposes. Should the Certificate or a portion of it be sold, the Commission will have the authority to require the new owner to submit a water conservation and/or drought contingency plan, as appropriate. For any water leases under the Certificate, Luminant will require as a condition of the lease that the lessee provide a water conservation and/or drought contingency plan that is appropriate to the use to which the lessee intends to put the water.

7. *Explain how the proposed amendment will or will not impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.*

In its decision in *City of Marshall*, the Texas Supreme Court held that the Commission should evaluate whether a proposed amendment will affect other water rights holders or the environment "beyond or irrespective of" the full-use assumption.<sup>5</sup> The Court gave some examples of changes that could have such potential effects, including moving a diversion point upstream from a senior water right holder or changing a use from a non-consumptive use to a consumptive use.<sup>6</sup> The proposed amendment does not request a change in the existing diversion points, all of which are from an existing storage reservoir. And the proposed additional authorized uses are, if anything, likely to be less consumptive than the existing use (cooling and condensing for an electric generation facility). The Application does not request any amendment that creates a potential adverse impact on other water rights holders or the environment beyond or irrespective of the full-use assumption.

#### VI. Signatory Authorization

The Application is signed by Mr. Steve Horn, Senior Vice President of Luminant Generation Company LLC. Evidence of Mr. Horn's authority to sign the Application on behalf of Luminant is attached hereto as Attachment C. Please refer to Section 2.2 of the Amended and Restated Limited Liability Company Agreement.

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<sup>5</sup> 206 S.W.3d at 107.

<sup>6</sup> *Id.*